Dodd-Frank Act - Swaps rules update

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The March 11, 2013 deadline for clearing for so-called "Category 1" entities under the Dodd-Frank Act (DFA) has passed. Perhaps given the relatively small number of such entities impacted (swap dealers (SDs) and major swap participants (MSPs), estimated by some in the industry to number around 30), it entailed little drama. Specifically, this clearing mandate applies to four classes of interest rate swaps (IRS) - fixed to floating, forward rate agreements, overnight index swaps and basis swaps - in four currencies, as well as North American and European index credit default swaps (CDS).

April 10 was to have been the deadline for non-SD/MSP entities to register for and obtain a so-called LEI (Legal Entity Identifier), or CFTC Interim Compliant Identifier (CICI). This falls under the CFTC's final swap data and recordkeeping rule, known as "Part 45". Swaps participants are directed to use the CICI Utility site (designed by DTCC and SWIFT) to obtain this identifier and there are different guidelines depending on whether an entity is registering itself as a "primary party", or registering a third party. As swaps participants move to cleared swaps, one would think such non-SD/MSP participants (i.e. buy-side) would request their FCM to take on this administrative function. Although a recordkeeping rule such as this will not necessarily impact market structure, there could be unintended market fragmentation. This is yet another burden on swaps participants and rather serves to underscore ICE US's decision back in the autumn of 2012 to alleviate such burdens for its customers by moving all of its cleared swaps to futures.

However, given that CFTC Commissioner Bart Chilton earlier this month publicly called for a delay to reporting historical swaps, and more generally said he felt the Commission should refrain from enforcing swaps rules for end users for six months, it is perhaps no surprise that the CFTC has now delayed the April 10 deadline. In its "no-action" letter of April 9, the CFTC provided such non-SD/MSP swap counterparties with relief for compliance with Part 45 (as well as Parts 43 and 46 of the CFTC's regulations) until July 1, 2013 for reporting interest rate (IRS) and credit default swaps (CDS); until August 19, 2013 for reporting equity, foreign exchange and other commodity swaps; and until October 31, 2013 for reporting all other swap asset classes.

Whether or not this reprieve was the direct result of Commissioner Chilton's remarks, it certainly makes sense given that June 10 is the deadline for so-called "Category 2" entities (those that are not swap dealers, major swaps participants or active private funds) to comply with mandatory clearing of IRS and CDS. And, although clearing can (and certainly should) happen for these products, regardless of execution method or venue, it remains interesting (one might say crucially vexing) to participants in these markets that SEF (swap execution facility) rules have NOT been finalized. In fact the CFTC has suggested it won't (or can't) finalize SEF rules before May.

There was a lot of discussion at the recent Futures Industry Association Expo in New York about how many Category 2 entities have not yet begun the process of migrating to clearing (setting up agreements with FCMs and CCPs, testing middleware, etc.). And, just in case swaps counterparties don't have enough on their plate, on May 1, 2013 they must ensure they are adhering to the ISDA August 2012 Dodd-Frank Protocol.

April 26, 2013